
INVESTMENT CLIMATE STATEMENT 2010

Hamilton, Bermuda

Table of Contents

• Background notes	p. 2
• Overview of Foreign Investment Climate	p. 2-4
• Conversion and Transfer Policies	p. 5
• Expropriation and Compensation	p. 6
• Dispute Settlement	p. 6-7
• Performance Requirements and Incentives	p. 8-9
• Right to Private Ownership and Establishment	p. 9
• Protection of Property Rights	p. 10
• Transparency of Regulatory System	p. 10-11
• Efficient Capital Markets and Portfolio Investment	p. 12-13
• Competition from State-Owned Enterprises (SOEs)	p. 13
• Corporate Social Responsibility (CSR)	p. 13-14
• Political Violence	p. 14
• Corruption	p. 14-15
• Bilateral Investment Agreements	p. 15-16
• OPIC and Other Investment Insurance Programs	p. 16
• Labor	p. 16-17
• Foreign-Trade Zones/Free Ports	p. 17
• Foreign Direct Investment Statistics	p. 17-18
• Web Resources	P. 19

A.0 Background Notes

American Consulate General Hamilton has prepared the following background information on Bermuda, its economy and investment potential.

Bermuda is a small group of islands, totaling approximately 21 square miles in size. This fact is never far from the conscious thought of the people who live on the islands. Bermudians are particularly sensitive to the concepts of retaining the land for the citizens of Bermuda, ensuring that their citizens have preference with regards to employment, and that the assets of Bermuda benefit Bermudians.

Bermuda, an Overseas Territory of the United Kingdom, is a sophisticated and international entity. It is sophisticated in that its regulatory and legal systems adhere to high ethical and current standards and have their history grounded in UK law. Since 1684, the Crown has appointed a Governor and local legislation has been enacted by the colony. The Governor, who is appointed by the Queen, is responsible for external affairs, defense, and internal security. In other matters, he or she acts on the advice of the cabinet. Bermuda has its own written constitution, giving its elected cabinet government almost complete self-determination in conducting local affairs.

In addition, the country is a major industry center for the world insurance and reinsurance market. However, with a Bermudian population of approximately 50,000 and an expatriate presence of roughly 15,000, Bermuda can be somewhat insular. This manifests itself in all facets of life: social, political and business. Most Bermudians are either related, know one another or at a minimum know someone who knows another.

A.1 Overview of Foreign Investment Climate

The Government of Bermuda (GOB) welcomes foreign investment and continually seeks to develop innovative new financial services and products that manage risk and facilitate the efficient flow of capital. Incorporating a company in Bermuda is a relatively straightforward, well regulated and efficient process.

Bermuda has a stable economy, democratic government, low personal and corporate taxes, close proximity to the United States with extensive air and communication networks, a good pool of skilled professionals, and its dollar is pegged to the U.S. dollar.

According to the Department of Statistics, the top five investment sectors in Bermuda are international business, financial intermediation, real estate and rental activities, business activities, and wholesale, retail trade and repair services. In 2009, 15,392 international companies were registered on the island, a decline of 239 companies or 1.5 percent less than the total at the end of 2008. In total, 629 new exempted companies were incorporated in 2009 compared to 1,030 the year before representing a decline of 38.9 percent. The worldwide economic slump has slowed the pace of new companies coming to Bermuda.

Acquisitions, mergers, takeovers, greenfield investments and the incorporation of companies are governed predominantly by the Companies Act 1981 and subsequent Company Amendment Acts.

Foreign investors should be aware of the 60/40 rule when doing business in Bermuda. To be classified as a “local company,” where one is able to conduct business with the local population, a company must meet the three requirements of the 60/40 rule whereby Bermudians: 1) are the beneficial owners of at least 60 percent of the shares in the company, 2) exercise at least 60 percent of the total voting rights in the company, and 3) make up at least 60 percent of the directors of the company.

Many insurance and reinsurance companies opt to become exempt companies. An exempt company is one that is incorporated by non-Bermudians and domiciled in Bermuda but is exempt from the 60/40 rule. Exempt companies may be 100% owned by non-Bermudians. The term “exempt” has nothing to do with the concept of taxation, only ownership. Nor does the terminology imply that the companies are subject to any less supervision, regulatory oversight, or fiscal rules than are local companies. In general, exempt companies are precluded from doing business with other companies in Bermuda and may not own real property in Bermuda (with a few exceptions created by individual acts of the legislature). However, exempt companies may deal with other locally based exempt companies without restriction and may buy their locally needed necessities or services from local companies. Examples are the accounting, banking, legal, management and office supply services the exempt companies buy locally. In some instances, an exempt company can apply for a permit or waiver from the Ministry of Finance that allows them to do business in Bermuda with Bermudian clients.

Overseas and resident investors may form partnerships under the Investment Business Act 2003. An overseas partnership is one that is governed by non-Bermudian law. Exempt partnerships and overseas partnerships must maintain an office and place of business in Bermuda and must appoint and maintain resident representatives on the island. These companies may also have places of business in Bermuda, as well as any other jurisdictions they desire.

The ownership distinction between local and exempt companies may be starting to narrow. Companies with ownership of more than 40 percent by non-Bermudians wishing to carry on business in Bermuda may apply on a case-by-case basis to the Ministry of Finance for a license pursuant to the exemption provisions under 114B of the Companies Act. Many hotels and telecommunications companies fall into this category. In recent years, the Ministry of Finance removed the 60/40 ownership restrictions as they apply to three of the island’s four banks with conditions designed to prevent any foreign takeover of the bank. A factor contributing to the decision to grant those waivers may have been Bermuda’s desire to be in compliance with Organization for Economic Cooperation and Development (OECD) guidelines that seek to eliminate separate regulatory regimes for local and international companies. There is some indication that the insurance industry and financial services sector may also enjoy some liberalization in this regard in the future.

Bermuda is serious as to who it will permit to engage in business in its country, making the vetting process undertaken in incorporating a business straightforward, well regulated and efficient. The Bermuda Monetary Authority (BMA) is the integrated regulator of the financial services sector in Bermuda and screens all potential foreign investments. Depending on the type of business being established, the Ministry of Finance, Registrar of Companies and/or the Tax Commissioner’s Office may become involved in the process. Because Bermuda seeks to distance itself from offshore jurisdictions

that are considered tax or money laundering havens, the BMA has a list of criteria that companies must meet. At a minimum, the BMA requires: a copy of the company's most recent financial statements, a detailed business plan, the Memorandum and Articles of Association, equivalent documentation for non-incorporated bodies, copies of client agreements used or intend to be used for the business, personal questionnaires completed by all proposed institutional and/or individual controllers of the entity, a description of the group structure, an up-to-date chart for licensed institutions forming part of wider groups and a check for the application fee. By maintaining this standard, the BMA acts as the regulator for company incorporation. Contrary to what many believe, the tax system for both local and exempt companies is the same. In October 2009, the BMA launched an automated e-filing and e-approval system for corporate registrations. The system enhances the existing process by improving the speed of processing applications, while maintaining the integrity of its application review procedures. Company incorporation may take as little as four weeks.

The BMA provides continuing supervision and regulation of all investment providers, which are required to submit regularly financial documentation and other information about their business. If this criteria has not been met or if there has been a failure to comply, then the BMA has the right to restrict or revoke the company's license. The BMA will notify the company, which then must initiate corrective action with the BMA within a period of 14 days. Under the Investment Business Act the BMA may take several disciplinary actions: public censure, issuance of warning/ discontinuance notices, and, if required, winding up or dissolution of the company.

An investment provider that is aggrieved by a decision of the BMA may appeal the decision to a tribunal constituted in accordance with the Investment Business Act 2003, section 34. Bermuda's legal system, which has been in force since 1612, is based on English common law and principles of equity as well as English statute law and the judicial system upholds the sanctity of contracts. Three courts preside in Bermuda: the Magistrates Courts, the Supreme Court and the Court of Appeal. The court of last resort in Bermuda's legal system is the Privy Council in London.

Generally, there is no discrimination against foreign investors at the time of the initial investment or after the investment is made. Bermuda does not have many privatization programs; however, foreign investors are generally not treated differently than local investors in nationalized projects. Interested parties are able to become involved once the project has been put up for tender in the Bermuda Sun (Official Gazette) where all relevant information is given. The Ministry of Works and Engineering places its contract tendering system on its homepage for potential bidders to view. In 2009, the Bermuda Hospital Board announced that it would adhere to Public-Private Partnership (PPP) Standards during the bidding process for redeveloping the hospital.

Most franchises are generally not welcome in Bermuda; therefore, the GOB must give investors special permission to establish a franchise on the island. Franchise hotels are, however, an exception to this rule.

The outlook for the international business sector and financial services sectors remains strong. Although there has been some concern about the impact that proposed U.S. tax laws could have on Bermuda, for now this market remains open to potential investors.

A.2 Conversion and Transfer Policies

The U.S. dollar is used and accepted in Bermuda side-by-side with the Bermuda dollar, which trades at par with the U.S. dollar. Both currencies are freely interchangeable and transferable without restriction; however the BMA administers the Exchange Control Act 1972 (and Regulations made there under) that states that no capital or exchange controls apply to non-residents or to the various forms of offshore entities (exempt or permit companies or partnerships), which are free to import and export funds in all currencies with a \$50,000 transfer limit. The BMA reviews all transfers on a case-by-case basis. No taxes apply to such transfers, and there is no withholding tax on interest, dividend or royalty payments. In practice, government consent is not required for Bermudians to hold foreign currency and assets. The regulations that exist are in place to ensure the maintenance of local ownership and to make sure that people coming in from other countries have been vetted and been found credible and not at variance with world standards governing financial flows. In 2010, MPs passed legislation doubling the foreign currency purchase tax. The Foreign Currency Purchase Tax Amendment Act sees the tax jump from 0.5% to 1.0%. This means that businesses will have to pay more tax on goods bought overseas and imported into Bermuda.

The BMA performs inspections prior to granting specific exchange control permission for the issue and transfer of registered securities in Bermudian companies to persons deemed non-resident for exchange control purposes. Additionally, the BMA must approve the issuance and transfer of securities of local and exempt companies unless listed on a stock exchange.

In December 2009, Bermuda's Parliament passed The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Amendment Regulations 2009 authorizing the BMA to oversee wire transfers. The regulations came into effect on January 13, 2010. The legislation requires financial institutions to verify the accuracy and completeness of the information on the payer/originator before transferring funds, require financial institutions to retain for a period of five years, complete records on the payor/originator of the fund transfer, require financial institutions receiving wire transfers to maintain effective procedures to detect whether complete information on the payor/originator is received with the wire transfer and specify how the receiving institution should treat transfers with missing or incomplete information.

Generally, there are no major delays for remitting investment returns unless the entity needs approval from the BMA, and even then it should be less than 60 days.

In March 2009, Bermuda updated the Revenue Act 1898 to strengthen the requirements relating to cross border transportation of currency and monetary instruments. The threshold for reporting is \$10,000. Mandatory declaration forms are used for all incoming passengers (regardless of point of embarkation) and for outgoing passenger to the U.S. For outgoing passengers to Canada and the U.K. there is a disclosure system in place.

A.3. Expropriation and Compensation

Generally, there is no history or allowance for expropriation without just compensation in Bermuda nor have there been any expropriatory acts towards U.S. investors in Bermuda. Expropriation is regulated by the Housing Loan Insurance (Mortgage) Regulations 1984 and the Municipalities Act 1923.

A.4. Dispute Settlement

The BMA is the primary entity involved in investment disputes in Bermuda. In relation to the large amount of investment business in Bermuda, dispute resolution is seldom required.

As a British Overseas Territory of the United Kingdom, Bermuda's courts and legal system are based on the English legal system and are effective at enforcing property and contractual rights. The rules of practice and procedure are very similar to those of England and there is no government/authority interference in the court system. Bermuda has a lower court, Magistrates Court, and an upper court, the Supreme Court. There is an appellate court, the Court of Appeal, which is in session only at certain times of the year. There is also a procedure for appeals to the Privy Council of England and Wales. In addition, Bermuda has arbitration legislation, which may be invoked in certain circumstances.

With respect to international disputes, Bermuda enacted the Bermuda International Conciliation and Arbitration Act in 1993. In doing so, it adopted an internationally recognized arbitration code, the UN Commission on International Trade Law (UNCITRAL) model law of arbitration. The United Kingdom extended 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("The New York Convention") to Bermuda in 1979 and Bermuda became a party in 1980. The result is that arbitration awards from other countries including the United States are readily enforceable in Bermuda, and vice versa. The Convention is attached as Schedule 3 to the 1993 Arbitration Act. Bermuda has not entered any reservations regarding its ratification of the New York Convention. The United Kingdom has also ratified and extended to Bermuda the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States (1965) ("ICSID Convention"), although Bermuda is not a party to any bilateral or multilateral investment treaties.

It is the current unwritten policy of the Ministry of Immigration, Labour and Home Affairs that arbitrators and foreign counsel travelling to Bermuda for the purposes of arbitration do not need work permits. The Department of Immigration does require advance notice of the presence of such individuals in the jurisdiction for the purpose of the arbitration.

Commercial arbitration in Bermuda has been directly linked with the growth of international companies, in particular insurance and reinsurance companies, in Bermuda, which is one of the world's leading reinsurance markets and the most popular domicile for captive insurance companies. Arbitration clauses can be found in many insurance and reinsurance contracts. Often, these contracts name Bermuda as the arbitral seat, although they sometimes provide for arbitration in other locations, including in London under New York substantive law (the so-called "Bermuda form"). At present, providing for arbitration in Bermuda pursuant to Bermudian substantive and procedural law is becoming increasingly popular in lieu of "Bermuda form" arbitration clauses.

Bermuda has a bankruptcy law – the Bankruptcy Act 1989. The Supreme Court (a first instance court of unlimited jurisdiction) administers the winding up of companies. In Bermuda, the Companies Act 1981 and the Companies (Winding Up) Rules 1982 govern the winding-up of companies. Foreign money judgments can be enforced under Bermudian law either under statute or common law, depending upon the country in which the original judgment was obtained. Under the Judgments Reciprocal Enforcement Act 1958 (JRE), Bermudian courts will recognize and enforce foreign money judgments as if they had been originally obtained in Bermuda. The JRE follows the same procedure as the Foreign Judgments (Reciprocal Enforcement) Act (1933) of the United Kingdom. A foreign creditor may apply for the bankruptcy of an individual or for the winding-up of a company provided the creditor follows the procedures set out in the Bankruptcy Act 1989 and the Companies Act 1981, respectively.

The following are recent examples of dispute settlement in Bermuda. In 2009, the media reported a situation involving a Bermudian investment company called Emerald Financial Group. A husband and wife management team was charged with stealing more than \$300,000 from their clients and money laundering. The BMA reacted quickly by initiating winding up procedures, including liquidating assets and organizing meetings with concerned investment holders and managers. The BMA also created a working group to review and revise the existing code of conduct issued under the Investment Business Act 2003 (IBA). From this working group the BMA established the General Business Conduct and Practice Code, providing general guidance to investment providers as to their conduct when dealing with clients and helping clients make informed investment decisions.

Also in 2009, a dispute took place between two U.S. investors employed by a Bermudian-owned company that rents out motorized pedestrian vehicles (Segways) to tourists in Dockyard. The plaintiff claimed that after he made his initial investment he was forced out of the business by the defendant and denied profits. The New York Supreme Court found that the plaintiff had become a victim of breach of contract and fraud and was awarded the amount he invested, plus costs which amounted to approximately \$500,000. The Bermudian company president later fired the defendant for “serious reasons” and he left the island.

In 2006, Bermuda authorities detained a Bermuda-based businessman, John Deuss, on an international warrant and released him on \$10 million U.S. bail. Deuss then traveled voluntarily with a police escort to The Hague for a closed hearing before a judge. Dutch authorities suspected Deuss of money laundering, tax fraud, handling stolen property and being in charge of a criminal organization in the Dutch island of Curacao. This activity was believed to emanate from the First Curacao International Bank where he and his sister were directors at the time. The First Curacao International Bank was at the time the largest shareholder of the Bermuda Commercial Bank. Dutch investigators have applied for help to a U.S. court seeking more information with their investigation. In 2009, Bermuda’s legal team won an appeal against Deuss regarding his arrest in Bermuda.

A.5 Performance Requirements/Incentives

Generally speaking, there are no grants or incentives available to foreign or domestic investors interested in investing in Bermuda, except perhaps in tourism and certain energy efficient goods. The

Hotel Concession Act (1991) provides relief from customs duty for materials used in hotel renovations and the expanded version of the Temporary Customs Duty Relief Bill (2002) extends similar relief for restaurant renovations, both aimed at resuscitating the tourism industry. In 2010, GOB removed the import duty on many energy efficient goods and goods for use in harnessing power from renewable energy resources.

The low taxation incentives are applicable to Bermudian and non-Bermudian businesses alike. There is no income tax, profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax, VAT or sales tax in Bermuda. Annual government fees are imposed on businesses and there is a payroll tax, which was increased in 2010 from 14% to 16%.

The 60/40 rule can be seen as both a requirement and an incentive to do business in Bermuda. As previously stated, local companies (those that can conduct business with other local businesses in Bermuda) must adhere to the three requirements of the 60/40 rule whereby Bermudians 1) are the beneficial owners of at least 60 percent of the shares in the company, 2) exercise at least 60 percent of the total voting rights in the company, and 3) make up at least 60 percent of the directors of the company. Hence, most international companies opt to become exempt companies, thereby able to claim 100% ownership of their companies, maintain an offshore domicile and conduct business globally except with local Bermudian companies.

The BMA usually imposes minimum capital and regulatory requirements for exempt companies. These are found under the Statement of Principles of the agreement that is drawn up between the BMA and the investor. The Statement of Principles defines which assets the BMA accepts as liquid, and applies a standard requirement for liquid assets to be at least equivalent to the total of three months expenditure, other than in the case of licensees who act neither as principal nor agent where only one month's expenditure must be maintained in the form of liquid assets.

The GOB requires investors to consider employing Bermudian workers where at all possible. To support this objective, Bermuda Immigration implemented two rules. The first rule states that companies must hire an equally qualified Bermudian or qualified spouse of a Bermudian before hiring a qualified foreign national. The second one pertains to a six year work permit rule under the Employment Act 2000, which states that foreign workers may work in Bermuda for up to six years unless their employers can demonstrate that they are "key employees," whereupon they may be permitted to work in Bermuda for up to nine years. These rules ensure that foreign nationals do not remain on the island for extended periods of time with the possibility of becoming permanent residents. The GOB's objectives are to encourage the training and eventual hiring of locals to fill senior management positions across the board. However, the Bermuda Government commonly employs U.S. and foreign firms on a consultancy basis for any research and development programs in Bermuda.

The HM Customs Department (Bermuda) is not aware of any discriminatory or preferential import or export policies affecting foreign investors, although the Bermuda Customs Tariff contains a number of preferential duty reliefs for certain local commercial activities (e.g. goods for the poultry and dairy

industry). Investors do not have to purchase goods from local suppliers or export a certain percentage of output.

Because of Bermuda's small size, the GOB does not normally solicit investment in infrastructure. One area where investments are welcome, however, is in with the redevelopment of the King Edward Memorial Hospital. Currently, the Bermuda Hospital Board is accepting Requests for Qualifications (RFQ's) which is the first step in a two-step bidding process. The Board hopes to conclude the process in late 2010.

A.6 Right to Private Ownership and Establishment

Commercial property ownership is a function of classification under the amended Companies Act pursuant to Section 114(b), where local companies are authorized to own property. Exempt companies, for the most part, may not own property, although they may lease commercial land for up to 50 years and residential property for their employees for up to 21 years.

The residential housing market is characterized by a shortage of affordable housing. Conscious of this shortage, the GOB enacted a law which states that non-Bermudians may only purchase one residential home from other non-Bermudians, and Bermudians may only sell to other Bermudians. Bermudians can purchase homes from any one they wish. The goal over time in separating the two pools of housing is to decrease expatriate home ownership. Homes that can be sold to expatriates must have a minimum annual rental value (ARV) of \$153,000 BDA (\$12,750 BDA per month), thus further restricting expatriate purchases. The same policy applies to the expatriate purchase of condominiums, which must have a minimum ARV of \$32,400 BDA (\$2700 BDA per month). The ARV is not only the basis for taxation, but also the basis for setting the threshold of value at which foreigners may purchase. As a practical matter, this limit protects approximately 95% of the island's homes from foreign purchase. In general, single family dwellings with price tags of less than US\$5.5 million may be sold to Bermudians only, not foreign nationals. The Bermuda Immigration and Protection (Land Holding Charges) Regulations 2009, enacted in December 2009, mandates that non-Bermudians must now pay a heavy 25% upfront purchase tax on homes and an 18% tax for condominiums.

Although government intervention has long resulted in two distinct markets, the gap between the two has been narrowing. Strong demand from the international business community, not only for home purchases but also for rentals drives scarcity into the local market. The outcome is that rental premiums have raised the value of local homes and introduced the price competition that the country had hoped to avoid by limiting ownership to locals.

The GOB has relatively few monopolies, among which are trash collection, ferry services and electricity production. The government's postal service is in competition with private mail services; public education competes with private education; and the public bus service competes with taxis, local mini-bus services, and multiple-passenger airport buses. Competition among telecommunications companies is keen.

A.7 Protection of Property Rights

Bermuda protects property rights through the Mortgage Registration Act 1786. The Book of Mortgages at the Registrar General's Office has details of all conveyances where mortgages are involved and all re-conveyances satisfying the mortgage. Bermuda banks are willing to lend approved buyers up to 80 percent of the appraised value of a house. With an average mortgage of 20 years, persons who are loaned \$400,000 for an average-priced \$500,000 house will pay a variable rate from 7.25 percent plus fees. A household would need to earn at least \$7,000 a month to qualify. Organizations that provide mortgages include local banks, Bermuda Savings & Loan, some local (Bermudian) insurance companies and some law firm's trust departments. Some of these organizations will lend to non-Bermudians. Terms range from 5-20 years.

The Acquisition of Land Act (1970), the Development and Planning Act (1974), and the Registry General protect and facilitate the acquisition and disposition of all property rights, such as land, buildings, and mortgages. Bermuda also has a land tax office and land valuations office. A system of land registration in Bermuda is planned but has not yet taken effect. Without this registration system, land owners must retain a Bermudian lawyer to research the history of the property and insure that a third party does not have a claim. Every time a piece of real estate in Bermuda changes hands it is recorded in a deed of conveyance or a mortgage.

As an overseas territory of the United Kingdom, Bermuda is subject to the same treaties to which the UK is a party, including those concerning intellectual property rights. The island cannot enter into treaties separate and apart unless the UK expressly authorizes it to do so. The GOB adheres to two international agreements, the Copyright and Designs Act 2004 and the Berne Convention. Two acts regulate the rights and registration of intellectual property: the Trademarks Act 1974 and the Patents and Designs Act 1930. The GOB has taken steps to implement the WTO TRIPS agreement; however, it has yet to sign the World Intellectual Property Organization (WIPO) internet treaties.

A.8 Transparency of the Regulatory System

Bermuda's legal, regulatory and accounting systems adhere to high ethical and current standards. The legal and regulatory systems are grounded in UK law, while the accounting systems and auditing standards typically follow Canadian Generally Accepted Accounting Principles. A Bermudian company may choose to follow the GAAP of any other jurisdiction, subject to full disclosure of its accounts. Bermuda is also a member of regulatory standard-setting bodies for banking (BASEL), insurance (International Association Insurance Supervisors -IAIS) and investment business (Financial Services Authority -FSA). Bermuda is not considered an offshore financial centre as there is no distinction in how it regulates businesses operating in the local economy and those operating internationally from within Bermuda. The BMA continues to apply differentiated requirements involving lighter regulation of schemes catering to institutional and sophisticated investors, with greater reliance on transparency and disclosure.

The Bermuda Monetary Authority continually strives to improve transparency in the regulatory regime and permits no unlicensed or unregistered entities to operate in this sector. The BMA is the sole regulatory body for financial services and is responsible for the licensing, supervision, and regulation of

financial institutions, including those conducting deposit-taking, insurance, investment, and trust business in Bermuda. There are separate regulatory acts which apply to each sector (e.g. trusts, deposit taking, investment business etc.). New laws and regulations are posted in the Bermuda Sun (Official Gazette) for public comment.

Collective investment schemes (CISs) are regulated by the BMA, and fund administrators are regulated persons for the purposes of the Proceeds of Crime Act (POCA). To strengthen regulations, CISs, including hedge funds, are subject to the Investment Funds Act, which came into effect in January 2007. The Investment Funds Act (IFA) is the legal framework for regulating investment funds, which includes, in addition to mutual funds and trust units, other business vehicles that pool and manage investment monies.

The amended Investment Business Act (2003) enhances the regulatory powers of the BMA, granting the BMA stronger intervention powers and clarifying provisions, such as the BMA's ability to cooperate with foreign bodies. Other provisions include measures to strengthen criminal and regulatory penalties. The Investment Business Act also brought the Bermuda Stock Exchange (BSX) under the regulation of the BMA.

In 2008, Bermuda passed the Proceeds of Crime Regulations (Supervision and Enforcement) Act (2008), which designated the BMA as the supervisory body for securing compliance with the regulations by regulated entities. BMA officers have indicated that it needs more resources, including increased staffing, to handle its responsibilities.

In March 2009, the BMA issued Guidance Notes for AML/ATF Regulated Financial Institutions on Anti-money Laundering and Anti-terrorist Financing, outlining and interpreting the legal and regulatory framework, indicating good industry practices, and assisting institutions to design and implement systems and controls to limit AML/ATF risks to institutions. This was followed up by an AML/ATF market survey, which was designed to ensure that licensed entities are in compliance with the Proceeds of Crime Regulations.

Bermuda is a member of the Egmont Group of Financial Intelligence Units, in which information sharing is implicit. The BMA Amendment (No. 3) Act (2004) clarifies the power of the BMA to cooperate with other overseas authorities. Other laws also authorize the sharing of information with overseas regulators: the Banks and Deposit Companies Act (1999), the Trusts (Regulation of Trust Business) Act (2001) and the Investment Act (2003).

Despite this progress, Bermuda suffered a small set back in April 2009, when it was placed on the OECD's grey list due to the lateness in implementing some tax transparency standards but by June it had moved onto the OECD's white list with the signing of the minimum 12 Tax Information Exchange Agreements (TIEAs).

A.9. Efficient Capital Markets and Portfolio Investment

Bermuda has the third largest insurance market in the world, thus must stay on top of the latest insurance product innovations. Bermuda also has a commercially sensible regulatory regime, an international stock exchange, an established financial and legal services sector and a geographical position between the U.S. and European markets, all which make it a prime jurisdiction where the insurance world and capital markets should converge. Institutional credit lines are normally arranged through U.S. or UK institutions. The Banks and Deposit Companies Act (1999) implement the Basel Committee's Core Principles for Effective Banking Supervision. Bermuda banks are compliant with the Basel II Accord. Bermuda's currency, the Bermuda dollar, is fixed or pegged 1:1 to the U.S. dollar. The Bermuda Monetary Authority (BMA), which has limited central bank powers, oversees Bermuda's currency. The BMA also facilitates portfolio investment but does not determine interest rates, which are set by the market and usually follow the FED (Federal Reserve) rates. Liquidity and solvency are important concerns for Bermuda's four banks as there is no monetary policy, no lender of last resort, no deposit insurance (although one is currently being developed per 2010 BMA business plan), and no implied guaranty.

Bermuda's banks are comparatively highly capitalized and hold significantly high quantities of liquid U.S. dollar assets on their balance sheets. Approximately two thirds of their aggregate balance sheet consisting of inter-bank placements or holdings of high quality marketable securities. Total assets for the largest banks in Bermuda for the last quarter of 2009 are: Bank of Butterfield USD 9.6 billion, HSBC Bank of Bermuda USD 10.7 billion. Loans and advances account for less than 40 percent of total assets. The banks are required to meet a minimum capital ratio of 10 percent at the consolidated level but, in practice, the aggregate ratio exceeded 20 percent in 2009. In other matters, the banks follow the Bank of England model. They are required to maintain separately capitalized subsidiaries in order to conduct their trust business. Noteworthy in 2009 was the placement of the country's largest ever initial public offer (IPO) with Butterfield Bank raising USD 200 million largely supported by Bermuda-based investors. Then in March 2010, Butterfield Bank received USD 550 million of new capital from foreign investors, the Carlyle Group and Canadian Imperial Bank of Commerce (CIBC). This deal was completed before shareholders were notified or able to vote on this transaction. The injections of extra capital are to enable the bank to de-risk its balance sheets and work toward a quick return on profitability.

Having its economy so intertwined with the U.S. has heavily influenced local capital restriction policies driving these towards an open flow of capital. Bermuda does not have developed capital markets, as it is virtually part of the U.S. and other overseas markets thus, credit availability, is to a small extent, dependent on local markets. Credit is allocated on market terms and foreign investors are able to get credit on the local and international market. The private sector has access to a variety of credit instruments through the local banks. Many companies, particularly the large ones, maintain external banking relationships. Since Bermuda does not have a central bank and does not conduct a controlling monetary policy, it has no need to intervene in the markets.

The U.S. Securities and Exchange Commission recognized the Bermuda Stock Exchange (BSX) as a "Designated Offshore Securities Market" in October 1996. Three years later it became a full member of the International Federation of Stock Exchanges. In 2005, the BSX was granted Designated Investment Exchange status by the UK Financial Services Authority. The BMA provides oversight of the BSX and its

trading activity. The BSX introduced an electronic clearing, settlement and registration system designated as the Bermuda Securities Depository (BSD), which is also under the supervision of the BMA. The BSD was designed to facilitate more efficient trade settlement for BSX-listed securities by allowing book entry settlement rather than paper based settlement. Some examples of companies listed on the BSX include: ACE Limited, Argus Group of Companies, Bermuda Commercial Bank, Butterfield Bank, Deutsche Bank AG, HSBC Corporate Money Funds and Orbis.

Consistent with wider international trends, the impact of the global economic slowdown has created a challenging commercial environment for domestic companies resulting in most share prices ending 2009 at lower levels. The total market capitalization of the BSX on 31 December 2009 (excluding fund listings) stood at over \$225 billion, of which approximately \$1.4 billion represented the domestic market. Total trading volume for the period was 5.7 million shares with a corresponding value of \$50.9 million compared to 7,397,732 shares with a corresponding value of \$101.5 million for 2008. The RG/BSC Index closed the year at 2072.41, which is 39.3% lower than 2008. In 2009, the BSX made significant changes to its data dissemination capabilities by upgrading the backbone of its website, thus making additional data on BSX listed issuers available, including a ticker feed of trading prices.

A.10 Competition from State-Owned Enterprises (SOEs)

Bermudian state-owned enterprises (SOEs) are active in the public transportation sector (buses and ferries), the healthcare system, electrical utility (BELCO), and the post office. The rest of the economy is in the hands of private enterprise. Public enterprise generally has easier access to market, credit, licensing and other business operations than private enterprises do in Bermuda.

These state-owned enterprises are required to provide financial information as necessary to the department heads, who then submit the financial information annually to the Auditor General. Governance of the SOEs are in a pyramid structure whereby a politically-affiliated Minister heads the department, followed by a Permanent Secretary, the heads of each department, then the support staff. Generally no boards of directors are affiliated with Bermuda SOEs, however some departments may have advisory boards.

A.11 Corporate Social Responsibility (CSR)

There are many local and international companies domiciled in Bermuda that practice corporate social responsibility (CSR). Most firms have sound ethical standards, which are the backbone of their businesses. Many firms also become involved in philanthropic endeavors such as donating, volunteering, and fundraising for local and international causes such as Habitat for Humanity, Amnesty International and various health –related charities. Many companies also have environmental programs in place which work on reducing their carbon dioxide emissions and building “green” office spaces and buildings. Bermuda does not have an extensive recycling program due to the high cost of shipping the collected material overseas. So far the island only recycles glass and tin.

Businesses may apply to the Minister of Labour, Home Affairs and Public Safety for designation as a “Good Corporate Citizen.” This program identifies companies of good standing in Bermuda who support

(via training, scholarships) and employ a fair number of Bermudians. If a company meets the criteria, the Minister may grant pending work permit applications permission-in-principle and fast-track them through the work permit process.

A.12 Political Violence

There have been no recent incidents of political violence in Bermuda.

A.13 Corruption

The Bermuda Criminal Code (1907) and the Proceeds of Crime Act (1997) make provisions for punishing corrupt practices in the area of investments, particularly for the offences of misleading statements and practices, market manipulation and insider dealing. The Parliamentary Election Act (1978) addresses giving bribes to (or accepting bribes from) a government official; the penalty under this act is \$1,000 or up to two years imprisonment or both. The Parliament Act of (1957) provides for a five-year imprisonment and/or up to \$84,000 in fines for the bribery of a member of the House of Legislature.

Although there have been several reported incidents of public corruption, the most notable case to date has been the Bermuda housing scandal in 2006 wherein the Auditor General's office investigated several prominent politicians and businessmen affiliated with the Bermuda Housing Corporation. The current government tried to place a "gag order" on the local media regarding the incident, which only escalated the issue into a dispute with the U.K. Governor.

In 2010, several 2007/08 reports by both the current and former auditors' general were published that found evidence of massive mismanagement of government funds and recommended that police investigate four cases of overspending and/or lack of oversight and poor internal controls. As a result of the Auditor General's report, the Ministry of Finance has asked the Bermuda police to investigate further. The Minister of Finance stated that "The Government is moving already to further strengthen tendering and procurement practices, including ensuring that there is the appropriately provided expertise to ensure proper scoping and design of capital projects to reduce subsequent change orders that are often the cause of cost overruns".

BSX regulations prohibits its members from engaging in insider dealing. Trading members are obliged to comply with all by-laws, regulations, codes, decisions, orders, directions and other actions made or done on behalf of the BSX. This includes, but is not limited to, complying with regulations not to conduct acts of misconduct such as insider dealing, making material misstatements and providing false and/or misleading information. It should also be noted that regulated entities holding licenses under the Investment Business Act 2003 are required to conduct business in a prudent manner in accordance with a Code of Conduct published under the Act which, amongst other things, prohibits market manipulation.

The BMA Amendment Act 2002 formalized the BMA's responsibilities to include assisting with the detection and prevention of financial crime. The BMA conducts on-site reviews and detailed compliance testing of financial institutions' Anti-money laundering/Combating Financing Terrorism (AML/CFT) controls. It engages in active perimeter policing responsibilities and has legal powers to undertake

investigations of unlicensed persons suspected of breaching the regulations, although the BMA has not found it necessary to use these legal powers extensively.

Keen to rise above any perceived impropriety associated with offshore centers, Bermuda continues to update its regulatory framework to meet international standards, including those of the International Monetary Fund (IMF) and those espoused by the Financial Action Task Force (FATF) and the Organization for Economic Cooperation and Development (OECD). In April 2009, the OECD included Bermuda in the “grey list” of jurisdictions that had committed to international tax transparency standards but have not yet implemented them and Bermuda responded quickly. By June 2009, the Government of Bermuda had moved onto the “white list” with the signing of the minimum required 12 TIEAs. Bermuda government officials and international businesses also hope that Bermuda’s placement on the white list will deter possible U.S. legislation that could drive business away from Bermuda and other offshore jurisdictions.

A.14 Bilateral Investment Agreements

There is no bilateral investment treaty between Bermuda and the United States.

Bermuda has a bilateral taxation treaty with the U.S. signed on 11 July 1986 entitled “Convention between the Government of the United Kingdom of Great Britain and Northern Ireland (on Behalf of the Government of Bermuda) and the Government of the United States of America Relating to the Taxation of Insurance Enterprises and Mutual Assistance in Tax Matters.” The U.S. Senate ratified the treaty, commonly referred to as the U.S.-Bermuda Tax Convention Act of 1986, in 1998, limiting U.S. taxation of Bermuda-based insurance companies. Under the U.S. - Bermuda Tax Convention Act, the United States agrees to waive for eligible Bermudian insurance companies any income and excise taxes on insurance premium income derived from the United States. An “eligible” company is defined as one a) whose “predominant business activity is the issuing of insurance, reinsurance, or annuity contracts and the investing of insurance reserves and other capital incident to the carrying on of the insurance business,” and b) that does not operate as a permanent establishment in the U.S.

The U.S. and Bermuda also agreed to provide mutual assistance in tax matters, including the exchange of confidential information. The provision was drafted principally to assist the United States enforce its tax laws. The degree of assistance depends on whether the offense was civil or criminal and when it occurred. As a quid pro quo, the treaty also authorizes U.S. tax deductions for persons who incur expenses while attending business conventions in Bermuda. The act further lists Bermuda as an authorized site for foreign sales corporations (FSC), which were authorized pursuant to the 1986 Tax Reduction Act. An FSC is a subsidiary of a U.S. company that manufactures or provides U.S. goods or services, either selling directly or via an agent. Earnings could ultimately accrue to its parent in the form of a tax exempt dividend, thereby enabling the U.S. parent to supply goods and/or services at competitive prices. An FSC can arrange for the sale or supply of goods or services to foreign customers. It may sell either directly or arrange sales. Earnings may ultimately be returned to its parent in the form of a tax exempt dividend. It is via this exemption that benefits derive to the U.S. parent, which is able to supply goods and/or services at a more competitive cost over its foreign trading rivals.

Bermuda has been added to the category “A” list of signatories to the IOSCO MMOU (International Organization of Securities Commissions Multi-lateral Memorandum of Understanding), which provides for mutual co-operation and the exchange of information among securities regulators. In June 2009, the BMA was approved as a signatory to the new Multi-lateral Memorandum of Understanding (MMoU) established by the International Association of Insurance Supervisors (IAIS). The IAIS developed the MMoU to establish a formal basis for cooperation and information exchange between signatory regulators who supervise insurers with international, or cross border operations.

Bermuda contributes statistics to the International Monetary Fund, Bank for International Settlements (BIS), the International Association of Insurance Supervisors (IAIS) and international banking statistics.

A.15 OPIC and other investment insurance programs

Bermuda is not a member of OPIC or any other investment insurance programs.

Investors in Bermuda do not enjoy the same kinds of protections as provided by other jurisdictions such as the U.S., and should exercise their own “due diligence.” There is no deposit protection for owners of mutual funds or trusts, nor is there any central fund to reimburse investors. The BMA does, however, maintain as public information a register of all licensed investment service providers. Moreover, investment managers must be licensed pursuant to the Investment Business Act of 1998. Prior to licensing, the investment service must provide proof of adequate professional indemnity insurance. In 2006, the GOB passed the Investment Funds Act, which clearly outlines how public funds are regulated and defines the framework for non-public, institutionalized funds.

A.16 Labor

Labor troubles are a part of Bermuda’s history, sometimes ebbing and sometimes surging. Worker unrest in the early 1980s played a role in the decline of tourism, which in its heyday in the 1960s was the foundation for Bermuda’s economy. Although Bermuda continues to endure labor disputes (covered under the Labour Disputes Act (1992)), the number of disputes has decreased in recent years due in part to the passage of fair labor laws favored by most Bermudians. The labor force is highly unionized; labor relations can be adversarial and at times contentious, particularly in the public service sector and the hotel industry. In 2006 and again in 2009, Bermuda taxi drivers protested the installation of GPS systems in every cab, and the Bermuda Industrial Union Transport Division instigated “work stoppages” during contract negotiations. In 2007, the Bermuda Union of Teachers sought a payment settlement for a back-dated cost of living increase, not all of which was received, leading to the teachers going on strike. In addition, dock workers and prison officers have participated in “work to rule” disputes. Many of these actions, however, do not affect all Bermudians in their daily routine. It was reported in 2008 that many of the island’s union bosses were incensed at the current government’s refusal to accept binding arbitration awards.

Historically, a large part of the management workforce has come from overseas. This fact has become a political issue among Bermudians, the Bermuda Government and the business community seeking qualified skilled personnel. There have been some instances where a company has been forced to hire a

Bermudian apprentice in lieu of a qualified foreign national. Regardless of this fact, Bermuda usually enjoys a comparatively low unemployment rate; it was 4.5% in 2009, up from previous years when it was as low as 2.1%.

The Bermuda Government requires investors to consider employing Bermudian workers where at all possible. To support this objective, the Bermuda Department of Immigration implemented two rules. The first rule states that companies must hire an equally qualified Bermudian or qualified spouse of a Bermudian before hiring a qualified foreign national. The second rule states that foreign workers may work in Bermuda for up to six years unless their employers can demonstrate that they are “key employees,” whereupon they may be permitted to work in Bermuda for up to nine years. These rules ensure that foreign nationals do not remain on the island for extended periods of time with the possibility of becoming permanent residents. The GOB’s objectives are to encourage the training and eventual hiring of locals to fill senior management positions across the board. Thus, while limited work permits are issued to foreigners, there is a constant need on the part of corporations to prove that qualified Bermudians are unavailable to perform the job. However, it is common for U.S. and foreign firms to be employed on a consultancy basis by the Bermuda Government for any research and development programs in Bermuda.

While there is no employment protection legislation in Bermuda (except anti-discrimination laws), organizations like the local Employers Council (no part of Government) promote common practices. There is also legislation that concerns the liability of employers for compensation for the death or injury of employees arising out of and in the course of employment. In addition, employers provide basic hospital insurance and comply with general health and safety regulations. Over the years local newspapers have occasionally reported that some local companies had hired foreigners to join them in a business and later dismissed them. Sometimes the foreigner has lost months of salary owed, his/her financial and/or intellectual property investment, and has on occasion had his/her work permit/permission to remain revoked.

Workers and managers alike are finding fault with the Employment Act of 2000 and white collar employees are joining the Bermuda Public Services Association in greater numbers to seek collective relief from overtime rules provided by the Act. However, in 2009, the Bermuda Hotel Association, the Bermuda Industrial Union and GOB worked together to renegotiate the hotel workers’ contract with little fanfare, a result of mutual recognition of the consequences of tourism’s woes.

A.17 Foreign Trade Zones/Free Ports

Bermuda has no free port, although retailers hoping to increase sales sometimes broach the idea.

A.18 Foreign Direct Investment Statistics

There are few details available regarding foreign direct investment in Bermuda; however, the Bermuda Department of Statistics notes that: the aggregate total assets under management of licensed investment providers (excluding banks and overseas entities) amounted to approximately \$88.2 billion

compared to \$180 billion the previous year. This reflects the significant downturn in securities markets worldwide. The aggregate capital of the licensed sector was \$1.1 billion as at the end of 2008.

On December 31, 2008, consolidated assets of Bermuda banks totaled \$22.8 billion, a 6% decline compared to the previous year's level of \$24.2 billion. There was a decline in deposits with other banks and investments of 34% and 14% respectively. The contraction in deposits with other banks and investments was partially offset by a 17% increase in loans and advances. Overall, asset quality remained strong with past due loans totaling less than 2% of total loans, similar to the previous year. Notwithstanding an 18% growth in savings deposits, total deposit liabilities declined by 7% to total \$19.4 billion at the end of the year. The overall decline in deposit liabilities reflected a reduction in both demand and time deposits during the year.

In general, ownership in the Bermuda insurance sector is geographically diverse, but U.S. companies own approximately 60% of the active commercial insurers. Bermudian-owned and European-owned insurers represent approximately 20% and 15% of the market, respectively. Around one in three commercial insurers are publicly-listed companies, of which two-thirds were listed on U.S. exchanges. The insurance sector accounted for approximately 10% of the total employment of 40,213 in Bermuda in 2008. The growth in the insurance sector helped boost the market's total assets, which grew 7% in 2008. The combined assets of Bermuda's commercial and captive insurers were \$472.96 billion at year-end 2008 compared with \$442.24 billion a year earlier.

Web Resources

Bermuda Hospitals Board: www.bermudahospitals.bm .

Bermuda Insurance Market: www.bermuda-insurance.org

Bermuda International Business Association www.biba.org

Bermuda Laws On-line www.bermudalaws.bm

Bermuda Monetary Authority www.bma.bm

Bermuda On-line: <http://bermuda-online.org/>

Bermuda Stock Exchange: www.bsx.com

Department of Statistics: <http://www.statistics.gov.bm>

Government of Bermuda: www.gov.bm

HSBC Bank of Bermuda: www.bankofbermuda.bm

Registrar of Companies: www.roc.gov.bm

The Royal Gazette: www.theroyalgazette.com

USAID Economic Analysis and Data Services: <http://esdb.eads.usaidallnet.gov/query/do>